

2015-Ts-722

## IN THE CIRCUIT COURT OF SUNFLOWER COUNTY, MISSISSIPPI

**FILED**

TERRY W. JOHNSON, et al

V.

APR 18 2016

CIVIL ACTION NO. 2011-0083(CMC)(S)

ROGER DALE LATHAM

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**ORDER DENYING PLAINTIFFS' MOTION FOR ATTORNEY FEES AND PRE-JUDGMENT INTEREST AND GRANTING POST-JUDGMENT INTEREST**

**THIS MATTER** is before the Court on Plaintiffs' Motion for Attorney Fees, Pre-Judgment Interest and Post-Judgment Interest. The Court, having considered the motion, the submissions of the parties, and being otherwise advised in its premises, finds specifically as follows:

On December 19, 2014, a jury verdict was entered awarding Plaintiffs \$176,352.24 in compensatory damages. This Court determined that punitive damages should not be considered by the jury pursuant to *Miss. Code Ann. §11-1-65*, (1972), as amended. Judgment was entered on January 15, 2015. Plaintiffs filed the instant motion seeking attorneys' fees, pre-judgment interest, and post-judgment interest.

***1. Plaintiffs are Not Entitled to Attorneys' Fees***

Generally, attorneys' fees are not awarded under Mississippi law absent some statutory authority or contractual provision or where punitive damages are also proper. *Coastal Hardware and Rental Co., LLC v. Certain Underwriters at Lloyds, London*, 120 So.3d 1017, 1029 - 1030 (Miss.App. 2013).

In this case, it is undisputed that there is no statutory or contractual provision authorizing attorney fees. Thus, attorney fees are not proper unless punitive damages were also proper. *See, Coastal Hardware*, 120 So.3d at 1029 -1030.

Plaintiffs assert that an award for punitive damages is not a prerequisite for the awarding of attorney fees and are proper in accordance with *Aqua-Culture Technologies, Ltd. v. Holly*, 677 So. 2d 171 (Miss. 1996).

In *Aqua-Culture*, the Chancellor awarded the plaintiff attorney fees in lieu of punitive damages. In its affirmance of the trial court, the Mississippi Supreme Court reasoned that a trial judge may validly find that, although the conduct of a defendant in a given case is such that the awarding of punitive damages would be appropriate, the actual awarding of additional monetary damages above the compensatory damages would serve no purpose or otherwise be inappropriate. *Id.*

The Court also held that an award of attorney fees may be proper although the actual awarding of punitive damages is inappropriate, where the court finds that the conduct of the defendant is so extreme and outrageous that he, rather than the plaintiff, should bear the expense of litigation. *Aqua-Culture*, 677 So 2d at 184-185.

Here, in accordance with §11-1-65, this Court determined that under the totality of circumstances punitive damages should not be considered by the jury. Consequently, awarding attorney fees in lieu of punitive damages is improper.

Although it is unfortunate that Plaintiffs should bear the costs of this litigation, this Court is not at liberty to order the Defendant to pay such costs, unless it makes a finding of extreme or outrageous conduct. This is inconsistent with the Court's earlier decision that this is not a case for consideration of punitive damages. Therefore, Plaintiffs' request for attorney fees is denied.

## *II. Plaintiffs are Not Entitled to Pre-Judgment Interest*

Mississippi law recognizes judicial authority to award pre-judgment interest to a prevailing party in a breach of contract suit. *Coastal Hardware and Rental Co., LLC v. Certain*

*Underwriters at Lloyds, London*, 120 So.3d 1017, 1030 (Miss.App. 2013); citing, *Moeller v. Am. Guar. & Liab. Ins.*, 812 So.2d 953, 958 (Miss. 2002). For interest to be allowed, the amount due must have been liquidated when the claim was originally made, or the denial of the claim must have been frivolous or in bad faith. *Id.* However, interest may be denied where there is a bona fide dispute as to the amount of damages as well as the responsibility for the liability therefor. *Id.*

An award of pre-judgment interest under *Miss. Code Ann.* §75-17-1 would be improper where a claim for damages is unliquidated. *Falkner v. Stubbs*, 121 So.3d 899, 903 (Miss. 2013); citing, *Moeller v. Am. Guar. & Liab. Ins. Co.*, 812 So.2d 953, 959-60 (Miss. 2002). Plaintiffs' claims for damages were clearly unliquidated as they were not set forth in the alleged partnership agreement itself and were established by a jury without a fixed formula. *Falkner*, 121 So.3d 899, 903 (Miss. 2013).

Also, Plaintiffs' claim for damages was based on a breach of a partnership agreement. There were genuine disputes as to (1) the existence of a partnership agreement; (2) whether Latham breached the alleged partnership agreement; and (3) the amount of damages. Thus, because there was a legitimate dispute as to the parties' responsibility for liability as well as the amount of damages, Plaintiffs are not entitled to pre-judgment interest.

### *III. Plaintiffs are Entitled to Post-Judgment Interest*

*Miss. Code Ann.* § 75-17-7 does provide that judgments in cases such as this "shall bear interest at a per annum rate set by the judge hearing the complaint from a date determined by such judge to be fair but in no event prior to the filing of the complaint." (Emphasis added.) Thus, Plaintiffs are statutorily entitled to post judgment interest. See, *Mississippi Dept. of Mental Health v. Hall*, 936 So.2d 917, 929 (Miss. 2006).

It is therefore,

**ORDERED AND ADJUDGED** that Plaintiffs' Motion for Attorney Fees and Pre-Judgment Interest is hereby **DENIED**. Plaintiffs' Motion is **GRANTED** as to Post-Judgment Interest and the Defendant, Roger Dale Latham shall pay interest on the judgment at the rate of 8% from January 15, 2015.

**SO ORDERED** this the 17<sup>th</sup> day of March 2016.

  
**MARGARET CAREY-McCRAY**  
**CIRCUIT JUDGE**

**FILED**

**MAR 23 2016**

BY  **CAROLYN E. HAMILTON**  
D.C.

**MB 188**  
**pg 4-9**



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